



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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May 22, 2020

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**By ECF**

Hon. Robert W. Lehrburger  
United States District Court  
500 Pearl Street, Room 1960  
New York, NY 10007

Re: *Martinez v. Bronx-Lebanon Hospital Ctr.*, 19 CV 5582 (RWL)

Dear Judge Lehrburger:

This Office represents the United States (the “Government”) in this medical malpractice action brought by plaintiff Diana Martinez (“Martinez”) under the Federal Tort Claims Act (the “FTCA”). On behalf of all parties, I write concerning coordination of discovery in this case (the “Federal Case”) with that in a nearly identical case Martinez brought in New York state court (the “State Action”) against dozens of other, non-federal defendants including medical providers at Bronx-Lebanon Hospital (“Bronx-Lebanon”) and two radiology practice groups. As discussed below, we respectfully request that discovery in the Federal Action be stayed until July 1 to permit the parties in the Federal and State Actions to reach agreement on a stipulation coordinating remaining discovery.

Both actions arise from the alleged failure to diagnose and treat Martinez’s pituitary gland tumor. Specifically, emergency room medical staff at Bronx-Lebanon provided treatment for Martinez’s seizure-like symptoms and conducted imaging of her brain which revealed a mass later diagnosed as a pituitary gland tumor. Defendants, including the Federal Defendants, allegedly failed to investigate this brain mass and ensure that Martinez received appropriate treatment, which purportedly led to a two-year delay in the diagnosis and treatment of this tumor. Martinez’s tumor was eventually treated by medical staff at defendant Bronx-Lebanon. As a result, Martinez allegedly suffered numerous injuries including loss of vision, deprivation of a chance of better recovery, diminished life expectancy, and past and future medical expenses.

There is a significant degree of overlap between the Federal and State Actions in that both cases involve the same course of treatment provided by the same pool of health care professionals and, therefore, the parties will be seeking discovery from the same pool of witnesses and third-parties. For efficiency, all parties in the Federal and State Actions have agreed to host documents and deposition transcripts in a shared database, to share judicial orders issued in either case, to coordinate scheduling of witnesses and to develop a protocol for addressing discovery disputes during joint deposition of witnesses. Since March, however, discovery in the State Action has ceased due to the COVID-19 pandemic, New

York public health shelter orders, and related judicial orders restricting civil litigation in New York state courts. It is anticipated that litigation in the State Action will begin moving forward in late June. At that time, defendants in the State Action will be in a position to confer with their clients and determine a schedule for depositions and other additional discovery.

Accordingly, we request that discovery in this case be stayed until July 1 when the parties will submit a letter to the Court providing a status update and anticipate preparing a stipulation on the coordination of discovery as outlined above.

**The parties' request to stay discovery in this matter until July 1, 2020 is GRANTED. The Court looks forward to the parties' July 1, 2020 status letter.**

**SO ORDERED:**

5/22/2020

HON. ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Respectfully,

GEOFFREY S. BERMAN  
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Southern District of New York  
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